

STATE OF MICHIGAN
COURT OF APPEALS

DETROIT BUILDING AUTHORITY,

Plaintiff/Cross-Defendant-Appellee,

and

CITY OF DETROIT,

Intervening
Plaintiff/Counterplaintiff/Cross-
Plaintiff-Appellee,

and

WAYNE COUNTY TREASURER,

Defendant/Cross-
Defendant/Counterdefendant-
Appellee,

V

MICHIGAN FINANCIAL INVESTMENTS, LLC,

Intervening Defendant/Cross-
Plaintiff/Counterdefendant-
Appellant.

UNPUBLISHED

July 5, 2005

No. 253479

Wayne Circuit Court

LC No. 02-234701-CH

Before: Gage, P.J., and Cavanagh and Griffin, JJ.

PER CURIAM.

Michigan Financial Investments, LLC (MFI) appeals as of right the opinion and order granting summary disposition in favor of the City of Detroit (the City) and denying MFI's cross-motion for summary disposition. We reverse and remand.

This appeal arises from a dispute concerning the foreclosure of real property in downtown Detroit. In May 1997, the Detroit Building Authority (DBA) used bond proceeds to purchase two adjacent lots and construct a ten-story parking garage that spans both lots. In 1998, DBA and the City entered into a long-term lease in accordance with the building authority act,

MCL 123.951 *et seq.* The lease provides that when DBA's revenue bonds are retired, DBA will convey title of the land to the City. See MCL 123.963. The two parcels of land, with addresses 612 First Street and 432 W. Congress, were combined into one tax parcel with a new address, 450 W. Congress, in 1998. DBA filed a property transfer affidavit identifying itself as the purchaser and indicating its tax-exempt status. See MCL 211.27a(10). The City did not file a property transfer affidavit indicating its interest. The City's Municipal Parking Department, who had operated the garage since its opening, was designated as the taxpayer of record. Because no cross-references to the former tax parcels were made, a search of public city records for the former addresses would not indicate the City's interest in the property.

The Wayne County Treasurer (the Treasurer) determined that county taxes on the parcel formerly known as 412 First Street¹ were not paid for 1997, and he initiated foreclosure proceedings.² Notice of the proceedings was sent to DBA, but not the City. The trial court entered a judgment of foreclosure, and neither the City nor DBA appealed the judgment or attempted redemption. MFI placed the winning bid at the foreclosure auction and tendered payment. The redemption period passed without any redemption of the property occurring.

DBA then filed a lawsuit against the Treasurer, seeking to set aside the judgment of foreclosure. After MFI and the City intervened, the Treasurer cancelled the auction sale, refunded MFI's payment, and permitted the City to redeem the property.³ Following this redemption, DBA and the City voluntarily dismissed their claims. MFI then filed a claim against DBA, the Treasurer, and the City, seeking title to the property. The trial court granted MFI's motion for partial summary disposition of its claim, granting title in MFI's favor. Then it permitted the City to file a claim against the Treasurer and MFI for title to the property, ultimately granting summary disposition in the City's favor and vacating its prior order.

MFI argues that the circuit lacked jurisdiction over the City's claim because the court of claims has exclusive jurisdiction. Whether the trial court had jurisdiction is a question of law, which we review *de novo*. *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001).

Pursuant to Const 1963, art 6, § 13, circuit courts have original jurisdiction in all matters not prohibited by law. Circuit courts have "original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 600.605. MCL 600.6419 grants the court of claims exclusive jurisdiction over some claims against the state and its subparts. Subsection (4) states: "[t]his

¹ The garage occupies both parcels, but this case only concerns the parcel formerly known as 412 First Street.

² Although real property acquired by building authorities is exempt from taxation, the taxes levied during the twelve-month period preceding the sale are prorated between the seller and purchaser. MCL 211.2(3).

³ The Treasurer never delivered the deed to MFI.

chapter shall not deprive the circuit court of this state of jurisdiction over . . . proceedings for declaratory or equitable relief, or any other actions against state agencies based upon the statutes of this state in such case made and provided, which expressly confer jurisdiction thereof upon the circuit court. . . .”

The trial court did not err in asserting subject-matter jurisdiction. The nature of the claim, not its wording, determines whether the court of claims has jurisdiction. *Parkwood Limited Dividend Housing Ass’n v State Housing Development Authority*, 468 Mich 763, 770; 664 NW2d 185 (2003). On its face, the City’s cross-claim and counterclaim is for declaratory and injunctive relief seeking to quiet title. It is an action in rem concerning real property, not a personal action against the Treasurer for a tort or contract claim that the court of claims should hear pursuant to MCL 600.6419. The court of claims has merely concurrent jurisdiction with the circuit court over declaratory and injunctive actions that are ancillary to a tort or contract claim. MCL 600.6419a.

MFI contends that MCL 211.78l(1) of the General Property Tax Act confers exclusive jurisdiction on the court of claims. However, it only bars actions for *possession*. *Id.* (emphasis added). The City was already in possession of the property when it filed its complaint. Because the Treasurer had not delivered the deed to MFI, legal and physical possession were not the goal of the City’s lawsuit. The action sought to prevent the Treasurer from delivering and obtaining a declaration of its right to the property. Accordingly, the trial court did not err in exercising subject-matter jurisdiction.

MFI next contends that the City lacked standing to file the lawsuit. Whether a party has standing is a question of law that we review de novo. *Lee v Macomb Co Bd of Comm’rs*, 464 Mich 726, 734; 629 NW2d 900 (2001).

The City lacked standing because the foreclosure judgment was valid and extinguished the interest of DBA and the City. The validity of the judgment is apparent if one reviews the steps required of the Treasurer pursuant to MCL 211.78 *et seq.*⁴ After identifying the property as delinquent on its taxes, the Treasurer mailed the required notices to DBA. The City did not receive mail notices because its interest in the property was not properly recorded and the merger was not properly cross-referenced. Pursuant to MCL 211.78e, the Treasurer properly created a list of delinquent properties. The subject parcel was listed according to the address and tax identification number that were on record, and the City received this list. The Treasurer also provided notice by publication and sent an agent to personally visit the property pursuant to MCL 211.78i(3) and MCL 211.78i(6). The agent found the garage closed and the portion of it

⁴ This statutory framework applies despite the fact that the original delinquent tax was for 1997 and MCL 211.78a(1) refers only to “taxes levied after December 31, 1998. . . .” The Treasurer did not institute foreclosure proceedings until after the effective date of the statute. Moreover, the tax bill at issue included interest that accrued after the effective date. Levy means “[t]o impose or assess (a fine or a tax) by legal authority.” Black’s Law Dictionary (8th ed). The tax at issue was therefore levied or imposed after MCL 211.78 *et seq.* was enacted in its current form.

that occupies the subject parcel to be unoccupied. He posted notice in a conspicuous location pursuant to MCL 211.78i(3)(d).

MCL 211.78i(6) entitles a property owner to notice if that owner's interest is identifiable by reference to records in the office of any of the following: the county register of deeds, the county treasurer, the local assessor, or the local treasurer. The City's failure to record its interest or the merger of its property for tax purposes rendered any search of county records futile. Because city records are by law shared with the county, the Treasurer effectively searches all four sources by searching the county records. MCL 211.30(6). It was therefore error for the trial court to require the Treasurer to independently search all four sources. It is also too onerous to suggest, as the trial court did, that expansive inquiry beyond searching publicly available computer records was necessary. *Republic Bank v Genesee Co Treasurer*, 471 Mich 732, 741; 690 NW2d 917 (2005). The City itself was unable to figure out the missing paper trail of the property until it accessed its own internal archival records, a burdensome task that the statute never meant to impose on a foreclosing governmental unit. Strict compliance with the statutory notice provisions is not necessary, and we are convinced that the Treasurer afforded the City the required due process.⁵ *Wayne Co Treasurer v Westhaven Manor Limited Dividend Housing Ass'n*, ___ Mich App ___; ___ NW2d ___ (Docket No. 249807, issued February 24, 2005), slip op, pp 6-7.

The Treasurer filed a certificate of foreclosure as required by MCL 211.78g, and the court entered a judgment of foreclosure. DBA and the City failed to exercise any redemption rights or appeal the foreclosure judgment. Two months before the auction, the Treasurer provided the mayor and the city clerk a list of foreclosed properties and an option to purchase. The City did not exercise the option to purchase or attempt to redeem at the auction sale. DBA did not file its lawsuit until after MFI placed the high bid at auction. The City intervened one week later.

Pursuant to MCL 211.78m(2), "property shall be sold to the person bidding the highest amount above the minimum bid." Furthermore, the Treasurer was required to convey the property to MFI as follows:

Not more than 30 days after the date of a sale under this subsection, the foreclosing governmental unit *shall* convey the property by deed to the person bidding the highest amount above the minimum bid. The deed *shall* vest fee simple title to the property in the person bidding the highest amount above the minimum bid. [*Id.* (emphasis added)].

The Legislature's use of the word "shall" designates mandatory, not discretionary action. *Salter v Patton*, 261 Mich App 559, 565; 682 NW2d 537 (2004).

⁵ The City asserts that publicly owned real property may not be sold at a foreclosure auction. See MCL 211.371. We need not consider this argument because the Treasurer never received the required notice of the City's interest. *Ziegler v Simmons*, 353 Mich 432, 439; 91 NW2d 819 (1958).

The Treasurer cancelled the auction sale and refunded MFI's payment, referencing the sale receipt in which MFI acknowledged that it was bound by the "Rules and Regulations" of the sale, which gave the Treasurer the right to cancel at any time. Those same rules, however, incorporate the mandatory language of MCL 211.78m. Accordingly, MFI was entitled to the deed, and the City's interest in the land was extinguished. The City therefore had no standing to bring its claim. For the same reasons, DBA also lacks standing.

MFI argues that the trial court abused its discretion in granting the City relief from the foreclosure judgment pursuant to MCR 2.612. A trial court's decision to grant relief under MCR 2.612 is reviewed for an abuse of discretion. *Inverness Mobile Home Community, Ltd v Bedford Twp*, 263 Mich App 241, 246; 687 NW2d 869 (2004).

MCR 2.612(C)(1) allows relief from a judgment for a variety of grounds. Although the lower court did not specify which subsection it relied on, it is evident that its basis was the catchall provision of subsection (f), which provides "[a]ny other reason justifying relief from the operation of the judgment."

The apparent ground for the trial court's decision to grant relief pursuant to MCR 2.612(C)(1)(f) was that the City did not have notice of the foreclosure. That finding was in error. It was solely the City's fault that it did not receive notice of the foreclosure proceedings. The City failed to properly record its interest in the property, and the merger was not properly cross-referenced. When it merged the subject property with the adjacent property for tax purposes, it did not file the proper affidavit, which would have linked the record for the new address and tax identification number with the former ones. The record of the former address and tax identification number then ceased to exist. Anyone searching public records for the owner of the property, as the Treasurer attempted, would be unable to discover the City's interest in the subject parcel. The trial court placed too great a burden on the Treasurer when it opined that revealing to the record-keepers the purpose and extent of one's search might have made the effort something other than futile. Furthermore, the Treasurer is not required to request access to archival material that is unavailable to the public.

Although the trial court correctly noted that the City expeditiously intervened in the action following the foreclosure, the City failed to take advantage of the many opportunities to exercise its right to redeem the property. Instead, it piggybacked on the claims of other parties for eight months before moving for leave to file the cross-claim and counterclaim now on appeal. The City only filed this motion after the trial court granted relief to MFI and rejected the same arguments the City would ultimately repeat successfully. The grant of the motion therefore provided the City yet another opportunity to redeem the subject property, as opposed to an equitable accommodation of a situation that denied a party a meaningful defense in the first place. It was thus an abuse of the rule for a purpose it was never meant to serve.

Because the City lacked standing and was not entitled to relief from the judgment of foreclosure, it is not necessary to consider the remaining issues.

We reverse and remand for entry of a judgment instructing the Treasurer to convey title

in fee simple to MFI in exchange for the auction price. We do not retain jurisdiction.

/s/ Hilda R. Gage

/s/ Mark J. Cavanagh